

SENATE BILL 3109  
By McNally

AN ACT to amend Tennessee Code Annotated, Section 45-6-211 and Section 45-6-213, relative to disposition of stolen property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-6-213, is amended by deleting subsection (b) in its entirety and instead substituting the following:

(b)

(1) A party asserting ownership of any property, which the party alleges is stolen and which is in the possession of a pawnbroker, may seek to recover such property by first making a report to any law enforcement agency of the location of such property and providing the law enforcement agency with proof of ownership of the property; provided, that a report of the theft of the property was made to the proper authorities within thirty (30) days after obtaining knowledge of the theft or loss; and provided further, that the party asserting ownership agrees to assist in the prosecution of the party who pawned the property. The party asserting ownership must then notify the pawnbroker by certified mail, return receipt requested, or in person, evidenced by a signed receipt, of the person's claim to the property. The notice shall contain a complete and accurate description of the property and shall be accompanied by a legible copy of the applicable law enforcement agency's report of the claimed theft. If the party asserting ownership and the pawnbroker do not resolve the matter within ten (10) days after the pawnbroker's receipt of the notice, the party asserting ownership may, within thirty (30) days after the pawnbroker's receipt of the notice, petition the

general sessions court to order the return of the property, naming the pawnbroker as a defendant, and must serve the pawnbroker with a copy of the petition. Subject to subdivision (d)(6), the pawnbroker shall hold the property described in the petition until the right to possession is resolved by the parties or by the court. The court shall waive any filing fee for the petition to recover the property, and the sheriff shall waive the fees for service of process.

(2) If, after notice and a hearing, the court finds that the property was stolen and orders the pawnbroker to return the property to the party asserting ownership:

(A) The party asserting ownership may recover from the pawnbroker the cost of the action, including the party's reasonable attorney's fees; and

(B) If the pledgor of the property is convicted of theft of the property, a violation of this section, or of dealing in stolen property, the court shall order the pledgor to repay the pawnbroker the full amount that the pledgor received from the pawnbroker for the property, plus all applicable service fees and charges, plus all reasonable attorney's fees and costs incurred by the pawnbroker in defending a replevin action or any other civil action involving title to the property. For purposes of this subsection (b), "convicted of" includes a plea of *nolo contendere* to the charges and any agreement in which adjudication is withheld.

(3) If, after notice and a hearing, the court finds that the party asserting ownership failed to comply with the requirements set forth in this subsection(b) or otherwise finds against the party asserting ownership of the property, the court

shall order that party to pay the pawnbroker's costs, including reasonable attorney's fees.

SECTION 2. Tennessee Code Annotated, Section 45-6-213, is further amended by adding subsections (c) and (d) as follows:

(c) The sale, pledge, or delivery of pledged goods to a pawnbroker by any person in this state is deemed to be:

(1) An agreement by the person who sells, pledges, or delivers the pledged goods that the person is subject to the jurisdiction of the courts of this state in all civil actions and proceedings arising out of the pledge or sale transaction filed by either a resident or nonresident plaintiff;

(2) An appointment of the secretary of state by any nonresident of this state as that person's lawful attorney and agent upon whom may be served all process in suits pertaining to the actions and proceedings arising out of the sale, pledge, or delivery; and

(3) An agreement by any nonresident that any process in any suit so served has the same legal force and validity as if personally served in this state.

(d)

(1) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker has been stolen, the official may place a written hold order on the property. The written hold order shall impose a holding period not to exceed ninety (90) days unless extended by court order. The law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on property.

(2) Upon the expiration of the holding period, the pawnbroker shall give the appropriate law enforcement official written notice, sent by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the official received the written notice, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under subsection (b), title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims, but subject to any restrictions contained in the pawn transaction contract and subject to the provisions of this section.

(3) A hold order must specify:

(A) The name and address of the pawnbroker;

(B) The name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order;

(C) If applicable, the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property;

(D) A complete description of the property to be held, including model number and serial number, if applicable;

(E) The name of the person reporting the property to be stolen unless otherwise prohibited by law;

(F) The mailing address of the pawnbroker where the property is held; and

(G) The expiration date of the holding period.

(4) The pawnbroker or the pawnbroker's representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the holding period.

(5) The pawnbroker may not release or dispose of property that is subject to a hold order except as provided in subdivision (d)(6), pursuant to a court order, after a written release from the appropriate law enforcement official, or upon the expiration of the holding period.

(6) While a hold order is in effect, the pawnbroker must, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official shall not be considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the pledgor to pay restitution to the pawnbroker in the amount received by the pledgor for the property together with reasonable attorney's fees and costs.

SECTION 3. Tennessee Code Annotated, Section 45-6-211(a), is amended by adding the following as the first sentence of subsection (a):

(a) The pawnbroker shall have a possessory lien on the pledged goods pawned as security for the funds advanced, the pawn service charge owed, and the other charges authorized under this section, but not for other debts due to the pawnbroker.

SECTION 4. This act shall take effect July 1, 2006, the public welfare requiring it.